

Subcommittee on Duties of Elected Officials
Staff Report on Appointment Powers by James W. Ingram III

This report is intended to explain the various agencies whose appointment has been rendered ambiguous at best, or inconsistent at worst, with the City of San Diego's transition to a Strong Mayor form of government. The Subcommittee on Duties of Elected Officials has the ability to recommend a more consistent and elegant form of government, under which there is clear separation between executive and legislative responsibilities. The classic version is, of course, the United States Constitution, under which all officers of government are placed in the executive branch, unless they are clearly legislative (Speaker of the House) or judicial (Supreme Court and other inferior courts). Furthermore, the United States Constitution grants the president all appointment authority, subject in some cases to Congressional confirmation, except for Congress's own officers. Presently, this clarity of executive-legislative separation is absent from San Diego's City Charter. Part of this inelegance is due to outside organizations to which San Diego appoints members or liaisons.

Board of Port Commissioners

One of these is the Board of Port Commissioners. This board governs the Port of San Diego, managing the San Diego Harbor and administering the public lands along San Diego Bay. The State of California's Port Act specifically accords appointment authority to the city councils of the member cities (Section 16, San Diego Unified Port District Act). Thus, the seven members of the Board of Port Commissioners are chosen by the San Diego City Council (3 members), as well as the councils of Chula Vista, Coronado, Imperial Beach and National City (1 member each). The awarding of the appointing authority to San Diego's City Council was not a problem when the Mayor was a member of the Council, but does not make sense under a Strong Mayor system of governance.

San Diego County Regional Airport Authority

The San Diego County Regional Airport Authority manages the day-to-day operations of San Diego International Airport, addresses the region's long-term air transportation needs, and serves as the region's Airport Land Use Commission. The San Diego County Regional Airport Authority is governed by a nine-member Board, with three paid members serving as the Executive Committee. The Executive Committee is appointed by the Mayor of the City of San Diego, the Governor of the State of California and the Sheriff of San Diego County. All three of these appointees require confirmation. The Mayoral appointee is confirmed by the City Council, the gubernatorial appointee by the California Senate and the Sheriff's appointee by San Diego's County Board of Supervisors.

San Diego appoints two more members of the board to unpaid positions that are not part of the Executive Committee. (The other 4 unpaid members are appointed by the Mayor of Chula Vista, the mayors of north inland cities, the mayors of north coastal cities, and the mayors of East San Diego County.)

The process for the appointment of the City of San Diego's two unpaid members of the Airport Authority is detailed in Section 170016 of the state Public Utilities Code: "170016. (a) The permanent board shall be established pursuant to this section. The board shall consist of nine members, as follows:

(1) The Mayor of the City of San Diego, or a member of the city council designated by the mayor to be his or her alternate.

(2) A member of the public appointed by the Mayor of the City of San Diego. The initial term for this member shall be two years." (California Public Utilities Code)

The fact that state law indicates that someone is "designated by the mayor to be his or her alternate" seems to be very clear. Despite the clarity of this law, the ordinance by which the City authorized San Diego City Councilmember Tony Young's appointment indicated that he was selected through a unique process that the Mayor and Council President had to put together due to the anomalous result of Prop F for City representatives who are members of outside governmental organizations.

R-2006-629; Resolution Number R-301165, January 23, 2006 was the City Ordinance that appointed Council member Young to the Airport Authority and his other assignments to represent the City. This ordinance included language that appeared in several City ordinances appointing City representatives. The language stated that due to the implementation of Article XV implementing the Mayor-Council form of government, this appointment represented a necessary compromise. There was some ambiguity as to the appropriate appointment process, and "a review of the various boards, commissions, committees and governmental agencies to which the City appoints representatives is ongoing, and confirms that some appointments of City representatives (members of the City Council or Mayor) may be accomplished by the Mayor alone, some may be by the Mayor and Council acting jointly, and some may be accomplished by the City Council acting alone".

Given the situation created by the removal of the Mayor from the Council, there was some ambiguity as to what process was to be used to fill these positions. The Mayor and Council President agreed to jointly suggest which elected officials should serve as City representatives to these agencies.

Possible Anomalies

All of the following bodies have had members appointed under the same language as the ordinance that provided for appointing Tony Young to the Airport Authority and his other City assignments:

Liaisons to the

Port Commission

Southeastern Economic Development Corporation

Representatives and Alternates for the

Abandoned Vehicle Abatement Service Authority
 City-County Joint Homeless Taskforce
 City-County Reinvestment Taskforce
 Local Agency Formation Commission
 League of California Cities-San Diego County Division & Board of Directors
 Los Peñasquitos Canyon Preserve Taskforce
 Mission Trails Regional Park Taskforce
 Otay River Valley Regional Park Policy Committee
 SANDAG
 Board of Directors
 Executive Committee
 Borders Committee
 Energy Working Group
 Public Safety Committee
 Regional Housing Working Group
 Regional Planning Committee
 Transportation Committee
 Bayshore Bikeway Working Group
 Shoreline Preservation Working Group
 San Diego Metropolitan Transit System
 Board
 Executive Committee
 Taxi Cab Committee
 San Diego River Conservancy
 San Diego Workforce Partnership
 San Dieguito River Valley Regional Open Space Joint Powers Authority
 Service Authority for Freeway Emergencies

Other Problems

The anomalies listed above are not the only examples of a hodge-podge post-Prop F appointment process. There are many other potential anomalies arising from San Diego's transition from Council-Manager to Strong Mayor (Mayor-Council) city:

CCDC Board of Directors
 Historical Resources Board Members
 San Diego County Water Authority Board of Directors
 San Diego Housing Commission
 San Diego Regional Agency Board Members
 San Diego Convention Center Corporation Directors
 Tobacco Settlement Revenue Funding Corporation Directors

The vintage-1984 Council Policy 000-13 used to address this issue, but does not do so properly due to Prop F.

The above compendium does not include some other bodies which are set forth in the City Attorney's opinion of February 28, 2006, nor the attached table setting out the terms of the appointment of these bodies in a table.

Since the Mayor held a role in the appointment process for all of these agencies before Prop F, the Mayor should have a role in it after Prop F. One way to do this would be to adopt the procedure that Council Policy 000-13 recommended for those appointments by both Mayor and Council. The Council could offer suggestions for nominees, the Mayor would nominate appointees, and the Council would exercise confirmation over appointees.

When the Mayor was a member of the Council and voted with that body, then the Mayor played a part in the appointment of all of these City representatives. It would be an irony and problematic for the City if the strong mayor system removed the Mayor's role in selecting City representatives for these important agencies. The Mayor is the only policy making official elected by a City-wide vote.

City Attorney's Opinion

The City Attorney's February 28, 2006 opinion suggested that for many of these organizations where the Council is the appointing authority, the Mayor's role in the appointment process should take the form of a veto. This is better than allowing the Mayor no role at all on these appointments, but is not the appointment and confirmation process for which the voters expressed a preference with the passage of Prop F.

The City Attorney's opinion noted correctly that "These matters can be complex." The office indicates that they are making their "best efforts to interpret the appointments' authority regarding the City corporate boards and other entities where the controlling law is not always clear." The City Attorney's office is still reviewing the issue of SANDAG, as well as the San Diego Regional Transportation Agency because of the complexity of the appointment issues that were raised in terms of these appointments through the implementation of Prop F.

Remediation Options

Can the Mayor nominate with Council confirmation every kind of body that the Council appoints? The state law sometimes specifies that the governing body holds authority. In other cases, the state law provides leeway for differently structured cities. In the past, San Diego was a Council-Manager City, and passed ordinances implementing state law accordingly. For example, this meant that in terms of Redevelopment, instead of applying the provisions of the state Health and Safety Code applicable to Mayor-Council cities—which authorized the Mayor to appoint the members of the Redevelopment Agency with Council confirmation—the City acted to make the Council the Redevelopment Agency. In other cases, the City appears to have assumed the state-provided appointment authority as a Council. This was not problematic while the Mayor was a voting member of the Council under the Council-Manager system, but now that the

City has adopted the Mayor-Council system and the Mayor does not vote with the Council, this is problematic.

Rather than facing a situation under which there are some City agencies whose members are only connected with the Mayor's office to the degree that the Mayor has not vetoed their appointments, it seems preferable to establish a nomination and appointment process that leaves the Council as the appointing body to the extent required by state law. The Council could recommend individuals to serve, the Mayor could nominate those individuals who seem appropriately qualified, and the Council could appoint from among the Mayor's nominee(s). This would ensure that individuals chosen to represent the City reflect the wishes of all members of the governing body, which includes both the Council and the Mayor.

Possible Language

"Except as otherwise provided in the Charter or mandated by federal or state law, all City officers except the City Manager shall be appointed by the Mayor subject to confirmation by the Council. For the purposes of this section, every individual who represents the City shall be considered a City officer, regardless of whether his or her representation of the City is ex officio or as an appointee to any board, commission, committee or other governmental agency established pursuant to federal or state law.

In cases where state or federal law require that the City Council act as the appointing authority, the Mayor shall nominate with the advice and consent of the Council individuals to represent the City on agencies, boards, commissions, committees and departments. The Council shall appoint representatives from among the individuals nominated by the Mayor."

Time Limits

If the Subcommittee thinks it appropriate, language could be drafted setting time limits for Mayoral and Council action on appointments, confirmations and nominations. Staff will require some direction in terms of optimal time frames to be applied.

Miscellaneous City Entities

The Subcommittee raised the issue of City agencies, boards, committees, commissions, departments and offices that were obsolete or unnecessarily included in the Charter. It would seem appropriate to provide a single appointment process for all of these bodies rather than spelling out details specific to each in the Charter.

There are some variations to take into account. For example, the Citizens Review Board on Police Practices is appointed by the Mayor without Council confirmation. The Ethics Commission, on the other hand, has its duties specified in the Charter, but the provisions for appointing it are only in the Municipal Code.

The Director of Personnel is appointed in a manner unlike most other City officers, in that a citizen's commission appoints this officer. State law does not prohibit making this officer a mayoral appointee subject to Council confirmation. In fact, this is the way Los Angeles now selects their Personnel Director. To the degree that it is possible to establish one consistent set of rules for the appointment of all City representatives, the Subcommittee can recommend such unitary language. The complication arises, of course, in terms of those bodies for which the state law controls. For those bodies, staff would suggest the adoption of the language presented above.